IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

**WRIT PETITION NO.95 OF 2005**

Ashok Milapchand Jain and others )..Petitioners

Versus

Smt.Sunanda Kumarpal Gandhi )..Respondent

Mr.S.S.Patwardhan i/b.S.G.Pawar for the Petitioners.

Mr.N.P.Deshpande for the Respondent.

**CORAM: SMT.NISHITA MHATRE, J.**

**DATED: 11TH OCTOBER 2005**

**P.C.:**

. This Petition challenges the order dated 3rd December 2004 passed below Exhibit 17 in Civil Suit No.533 of 2000 by the trial Court allowing the application filed by the Respondent to take her Written Statement on record. The trial Court had, after considering the judgment of this Court in the case of *Prabhakar Madhavrao Mule* vs. *Bhagwan Mitharam Choudhari* in **Writ Petition No.4688 of 2003**, refused the application for taking the Written Statement on record since it was filed after 90 days. The Respondent on becoming aware of the judgment in the case of *Chintaman Sukhdeo Kaklij & others* vs. *Shivaji Bhausaheb Gadhe and others*, **2004 (4) Mh.L.J. 739**, filed a subsequent application for accepting her Written Statement on record. The trial

Court has allowed this application by concluding that sufficient cause has been made out for condoning the delay in filing the Written Statement. The delay was of 24 days beyond the 90 days limit stipulated under the Civil Procedure Code. The trial Court has found that the law has been subsequently explained and if exceptional circumstances existed, the trial Court could always take the Written Statement on record even after the stipulated period of 90 days. It is this order which is challenged by the Petitioners in the present Writ Petition.

2. The main contentions of the Petitioners are that the earlier order dated 12th April 2004 acts as res judicata and, therefore, the subsequent order dated 3rd December 2004 could not have been passed. It is further contended that the trial Court erred in reviewing its earlier order merely because there was a subsequent judgment to the effect that the Written Statement could be accepted by the trial Court even after the stipulated period of 90 days. Reliance is placed on the provisions of the Explanation to Order 47 Rule 1 of the Civil Procedure Code.

3. Mr.Deshpande, learned Advocate for the Respondent, submits that the trial Court has not exceeded its jurisdiction by accepting the Respondent’s Written Statement on record. The earlier application has been

refused because of the law as it stood then. The subsequent application has been allowed because thereafter the Supreme Court has explained the provisions of the Civil Procedure Code afresh and hence it has been allowed.

4. The application made by the Petitioner subsequently will in my opinion be barred by res judicata. The trial Court had earlier refused permission to the Respondent to file her written statement since she sought to file the same beyond the period of 90 days as stipulated under the Civil Procedure Code. This order was passed on 12.4.2004. Therefore, any application made subsequently for the same relief would in my opinion be barred. The contention of the learned Advocate for the Respondent that after the declaration of law in the case of *Chintaman Sukhdeo Kaklij* (supra), a second application is maintainable since the view of the Courts now is that a written statement can be accepted by the trail Court beyond the period of 90 days if the exceptional circumstances are made out by the defendants for not filing the written statement within the time stipulated. In my view, the respondent cannot be allowed to make such an application only because the Courts have in subsequent judgments declared that the period of 90 days to file the written statement is not mandatory and the written statement can be accepted by the trial Court even beyond

the stipulated period if exceptional reasons are furnished. Apart from this, the respondent has not furnished any exceptional reasons for the trial Court to have changed its view and accepted the written statement on record. In my view, the order passed by the trial Court amounts to reviewing its own order without there being any justification for doing so.

5. Writ Petition is, therefore, allowed. The impugned order dated 3.12.2004 passed by the trial Court below Exhibit 17 in Civil Suit No.533 of 2000 is set aside.